IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

ROANOKE CEMENT COMPANY LLC	)	
Plaintiff	)	
v.	)	
CHESAPEAKE PRODUCTS, INC.	)	
and	)	
	)	Civil Action No.________
FRIT, INC.	)	
FRIT INDUSTRIES, INC.	)	
SHELTON E. ALLRED	)	
CARL E. SCHAUBLE	)	
DAVID W. BENEFIELD	)	
JAMES M. WYATT	)	
TERRY W. TEETER	)	
Defendants	)	
SERVE ALSO:	)	
Mr. Shawn M. Garvin Regional Administrator United States Environmental Protection Agency, Region 3 1650 Arch Street Philadelphia, PA 19103-2029	)	

Ms. Gina McCarthy)
Administrator)
United States Environmental Protection Agency)
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1200 Pennsylvania Avenue, N.W.)
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)
Ms. Loretta E. Lynch)
Attorney General)
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Washington, DC 20530-0001)
)
Mr. David K. Paylor)
Director)
Virginia Department of Environmental Quality)
629 E. Main Street)
Richmond, VA 23219)

COMPLAINT

COMES NOW Roanoke Cement Company LLC, ("Roanoke Cement") by counsel, and for its complaint against the above-named defendants states as follows:

PARTIES

1. The plaintiff, Roanoke Cement is a Virginia limited liability company with its principal place of business in Virginia. None of its members are residents or citizens of Alabama

2. The defendant Chesapeake Products, Inc. ("Chesapeake Products") is an Alabama corporation, whose certificate to transact business in Virginia has been revoked by the Commonwealth of Virginia State Corporation Commission. It is believed and, therefore, alleged that Chesapeake Products is not presently actively engaged in business. To the extent that it is so engaged, its principal place of business is in Alabama.

3. The defendant Frit Industries, Inc. ("Frit Industries") is an Alabama corporation, which on information and belief is alleged to be the parent company of Chesapeake Products. The defendant Frit, Inc. ("Frit") is an Alabama corporation and is a holding company which on information and belief is alleged to own Frit Industries, Inc. The principal place of business of Frit Industries and Frit is in Alabama.

4. The individual defendants, Shelton E. Allred, Carl E. Schauble, David W. Benefield, James M. Wyatt and Terry W. Teeter, were at various times relevant hereto officers and directors of Chesapeake Products, and are all residents of Alabama.

5. Some, if not all, of the individual defendants, are also believed to be or to have been at relevant times hereto officers, directors and/or shareholders of Frit Industries and Frit.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), as there is complete diversity between the plaintiff and the defendants and the present controversy, exclusive of interest and costs, involves the sum or value in excess of $75,000.

VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) as a substantial part of the events or omissions giving rise to the claims arose in this district and the property which is the subject of this action is situated in this district.

BACKGROUND

8. Roanoke Cement either directly or through its subsidiaries owns and operates building materials businesses, including cement, and ready mix concrete manufacturing, distribution and sales facilities.

9. One of Roanoke Cement's terminals is located on real estate in the City of Chesapeake, Virginia on the east side of the southern branch of the Elizabeth River. The real estate upon which that terminal is situated was previously owned by one of Roanoke Cement's predecessors in interest, TTC, LLC. [1]

10. At all times relevant hereto, Chesapeake Products has owned an industrial facility which it used to manufacture fertilizer products on real estate situated adjacent to Roanoke Cement's terminal.

11. By Contract dated June 25, 1999 and an Addendum thereto dated June 25, 1999, Chesapeake Products sold a portion of that real estate, (comprised principally of the dock fronting on the Elizabeth River), to Roanoke Cement's predecessor in interest TTC, LLC. Closing took place on June 8, 2001.

12. Pursuant to the terms of the real estate Contract and the Addendum thereto ("Contract Documents"), Chesapeake Products agreed to grant an option to TTC, LLC to purchase the balance of that real estate comprised of approximately 7.7 acres (hereinafter "the Option Property"). The option was granted by an Option Agreement dated June 5, 2001. [A copy of the Option Agreement is attached hereto and made a part hereof as Exhibit

[1] TTC, LLC was merged into Roanoke Cement Company LLC on June 25, 2001. By virtue of the merger, Roanoke Cement Company LLC succeeded to all rights and interests of TTC, LLC to the real estate interests relevant hereto.

A]. At the same time, Chesapeake Products granted a lien by Deed of Trust to TTC, LLC to secure certain of Chesapeake Products' obligations under the Option Agreement. [A copy of the Deed of Trust is attached hereto as Exhibit B].

13. By its terms, including but not limited to those terms found in paragraph 12 therein, and by operation of law, the Option Agreement is binding and inures to the benefit of the parties' successors in interest and permitted assigns, and Roanoke Cement is now the holder of the option by virtue of succeeding to the interests of TTC, LLC thereunder.

14. In the Contract Documents and a Certificate of Representations and Warranties given by Chesapeake Products at the time it closed the sale of part of the property and delivered the option to Roanoke Cement, Chesapeake Products represented and warranted that the property, including the Option Property, was in compliance with all environmental, health and safety and building codes and all local, state or federal laws and regulations. It further represented that to the best of its knowledge, the Option Property does not contain any hazardous waste, hazardous substances, hazardous materials, toxic substances or toxic pollutants other than those disclosed in a phase 2 environmental report prepared by Langley and McDonald in November 1999. Further, it represented that the Option Property is not in violation of any federal, state or local regulations due to the presence of stored, leaked, spilled or disposed petroleum products, waste materials or debris, PCBs or PCB items or the past or present accumulation, treatment, storage, disposal, spillage or leakage of any hazardous substances.

15. Chesapeake Products further agreed in those Contract Documents that it would not commit waste upon the property and would maintain the property in as good a condition

as it was at the time of the original Contract. It further agreed in those Contract Documents that all representations, warranties, covenants and agreements contained in those Contract Documents would survive closing.

16. Chesapeake Products agrees and represents in the Option Agreement that, among other things, it will during the option term manage and maintain the Option Property in the condition it was when the Option was granted, ordinary wear and tear excepted. (See paragraph 9g of the Option Agreement).

17. Chesapeake Products further agrees and represents that it will not take any action or commit any omission that would constitute waste or damage or reduce the value of the Option Property during the term of the option. (See paragraph 9j of the Option Agreement).

18. Chesapeake Products also represents and warrants that there is no pending or threatened administrative proceeding, action or claim affecting the Option Property and that the Option Property is in compliance with all applicable environmental, health and safety, building code and all other local, state and federal laws and regulations. (See Option Agreement paragraphs 9d(3) and (4)).

19. With the exception of certain items disclosed in a Phase 2 Environmental Report prepared by Langley & McDonald, Inc. in November 1999, Chesapeake Products also represents and warrants that the Option Property does not contain any hazardous waste, hazardous substances, hazardous materials, toxic substances, toxic air pollutants or toxic pollutants as such terms are used under local, state or federal laws and regulations. (See Option Agreement paragraph 9d(5)).

20. Moreover, Chesapeake Products also represents and warrants that the Option Property is not in violation of any federal, state or local regulations due to the presence of stored, leaked, spilled or disposed petroleum products, waste materials or debris, "PCBs," or PCB items as defined in 40 C.F.R. § 761.3, underground storage tanks, asbestos or the past or present accumulation, treatment, storage, disposal, spillage or leakage of any hazardous substances. (See Option Agreement paragraph 9d(5)).

21. Under paragraph 6 of the Option Agreement Chesapeake Products agrees that in the event it ceased its business operations on the Option Property, then at the request of Roanoke Cement, it shall demolish and remove any or all remaining structures on the Option Property that may be designated by Roanoke Cement. Chesapeake Products would be reimbursed the demolition costs by Roanoke Cement at the conclusion of the demolition, conditioned on Chesapeake Products obtaining Roanoke Cement's written approval to the costs before they were incurred.

22. Chesapeake Products vacated the Option Property and abandoned its business operations thereon, leaving it in significant disrepair. Chesapeake Products, among other things, failed to manage and maintain the Option Property in the condition that it was, at the time of the Option Agreement, excepting ordinary wear and tear. Moreover, it failed to provide maintenance and repair to certain of the structures thereon and by virtue of its acts and omissions committed waste, damage and/or reduction in the value of the Option Property.

23. As a result of Chesapeake Products' failure to maintain and repair the property, the City of Chesapeake issued condemnation notices condemning certain of the

structures on the Option Property. The City also notified Chesapeake Products that unless it demolished or removed the condemned structures, the City would conduct such demolition and removal and would impress a lien on the Option Property for the costs thereof. Such lien would significantly diminish the value of the property and would have subjected Roanoke Cement's option interest in the property to said lien in favor of the City.

24. Chesapeake Products also left certain waste materials on the Option Property comprised of, among other things, manufacturing by-products in and around the structures, some of which contain hazardous substances including but not limited to lead.

25. It is believed and, therefore, alleged that in the summer of 2005, and since that time the United States Environmental Protection Agency ("EPA") and the Virginia Department of Environmental Quality ("DEQ"), conducted studies on the Option Property and determined that, among other things, it contains hazardous substances, other than those disclosed in the November 1999 Langley & McDonald Phase 2 Report. Said substances in certain instances exceed the permissible levels and standards of federal and/or state laws and regulations including, but not limited to, lead, beta-BHC, heptachlor epoxide, dieldrin, 4, 4'-DDT, methoxychlor, ketone, and aroclor-1254. Moreover, the EPA analysis detected arsenic, barium, cadmium, chromium, mercury and selenium, and various pesticides.

26. It is believed and therefore alleged that the EPA and the DEQ made demand on Chesapeake Products to clean up the site, but Chesapeake Products refused to do so. As a consequence, on or about May 31, 2007, the EPA initiated a time-critical removal action to address lead contamination at the site.

27. Thereafter, on August 30, 2007, the EPA entered into a Settlement Agreement and Order on Consent for Removal Action (“AOC”) with Chesapeake Products and Frit Industries, Inc. under the Comprehensive Response, Compensation and Liability Act (“CERCLA”), 42 USC § 9601, et seq. Pursuant to the AOC, Chesapeake Products and Frit Industries removed certain material piles and flood water from the site and demolished site buildings. EPA commenced other CERCLA removal activities at the site in April, 2009, including the removal of certain lead-containing surface soil and decontamination of certain concrete structures.

28. Despite the completion of the activities referenced in paragraph 27 above, significant contamination remains at the site. EPA and DEQ have advised Chesapeake Products and Frit Industries that the site is subject to Corrective Action under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et seq., and have made demands on them to conduct additional investigations and implement additional remedies,

29. Chesapeake Products and Frit Industries, however, have responded that they do not have the funds or assets to complete RCRA Corrective Action and thus are unable to discharge their obligations to the EPA, the DEQ, and to Roanoke Cement.

30. At all times relevant hereto, Chesapeake Products, Frit Industries and Frit were all controlled and operated by the individual defendants, who were common shareholders, officers and directors. At all relevant times, Frit and Frit Industries jointly and severally exercised absolute control over Chesapeake Products and treated its assets and employees as their own.

31. At all times relevant hereto, Chesapeake Products, Frit Industries and Frit were all operated by interlocking Boards of Directors out of the same offices in Ozark, Alabama. The three corporate defendants shared a common business address, telephone number and facsimile number. At all relevant times, Chesapeake Products was the agent of Frit and Frit Industries.

32. Frit Industries, Frit and the individual defendants corresponded with the plaintiff's predecessor concerning ostensible Chesapeake Products business using Frit, and Frit Industries stationery and creating the impression that the businesses were all operated jointly.

33. Frit Industries managed and administered the payroll of Chesapeake Products and directly deposited the paychecks of putative Chesapeake Products employees in Virginia on a regular basis every two weeks.

34. It is believed and therefore alleged that the funds of Chesapeake Products were co-mingled with funds of Frit Industries and Frit and the funds of one were used for the purposes of the others.

35. At all times relevant hereto, Chesapeake Products was undercapitalized and did not have sufficient capital to continue to operate its business and/or to discharge all of its legal obligations, including the obligations that it undertook under the Option Agreement and the Deed of Trust.

36. Notwithstanding Chesapeake Products' undercapitalization, Frit Industries, Frit, and the individual defendants nevertheless took the proceeds of the 2001 real estate transaction with Roanoke Cement and converted them to their own use and/or their benefit.

Defendants schemed, collaborated and aided and abetted one another to leave Chesapeake Products insolvent and unable to perform its obligations under the Option Agreement and the Deed of Trust.

37. At the time of entering into the Option Agreement, defendants Carl Schauble and Terry Teeter and, through them, defendants Chesapeake Products, Frit Industries, and Frit knew that they did not intend to continue the business operations of Chesapeake Products and also knew and intended that they would take the sales proceeds out of Chesapeake Products and leave it without sufficient funds to be able to operate and discharge its obligations under the Option Agreement and the Deed of Trust.

38. Defendants as part of their scheme to loot Chesapeake Products described above, caused Chesapeake Products to enter into the Option Agreement intending not to perform and to defraud Roanoke Cement by taking and diverting the proceeds out of Chesapeake Products and leaving Chesapeake Products unable to perform.

39. Thereafter, Frit Industries and Frit, acting through the individual defendants, ceased the operations of Chesapeake Products. They left the waste materials containing hazardous substances in the warehouse and elsewhere on the Option Property.

40. Defendants failed to take the steps to maintain the warehouse and other areas so as not to expose the waste materials to the elements and the environment.

41. Moreover, defendants willfully and deliberately ignored the notices and demands of the City of Chesapeake, the DEQ, and the EPA to cure or abate the conditions which they created asserting that Chesapeake Products was impecunious and financially unable to satisfy those contractual, statutory and regulatory requirements.

42. Moreover, defendants caused Chesapeake Products to anticipatorily breach its obligations under the Option Agreement and Deed of Trust. Chesapeake Products anticipatorily breached the Option Agreement by making itself unable to perform and unable to deliver the Option Property in the condition required to Roanoke Cement, upon Roanoke Cement's exercise of the Option. Chesapeake Products in addition actually breached its obligations to maintain the property and to remove those structures designated for removal by Roanoke Cement.

43. At all times relevant hereto, Frit Industries, Frit and the individual defendants operated Chesapeake Products as an alter ego or instrumentality of themselves, by, among other things, controlling its finances and assets, depleting Chesapeake Products' funds, and diverting the proceeds of the 2001 real estate transaction out of Chesapeake Products' hands while abandoning the waste on the Option Property and failing to maintain the Option Property, all resulting in clearly foreseeable damages to Roanoke Cement. Accordingly, the corporate veil of Chesapeake Products should be pierced and Frit Industries, Frit, and the individual defendants should be held liable for all resulting damages and all obligations of Chesapeake Products to Roanoke Cement.

CAUSES OF ACTION

COUNT I (Breach of Contract/Damages – Chesapeake Products, Inc.)

44. The allegations in paragraphs 1 through 43 are incorporated herein by reference.

45. Chesapeake Products has actually and anticipatorily, breached the Contract Documents, the Certificate of Representations and Warranties, the Option Agreement and the Deed of Trust securing the obligations thereunder in that, among other things, it has:

A. Failed to maintain and manage the property in the condition that it was at the time of the Option Agreement;

B. It has taken actions and/or has omitted to act in a manner that constituted and continues to constitute waste and damage to the property;

C. It has breached the representations and warranties respecting the Option Property's compliance with environmental laws and regulations and its representations and warranties that the property is free from waste and hazardous substances, other than those previously disclosed in the 1999 Langley & McDonald Phase 2 Report. Its failure to promptly and timely remove the waste materials from the site and to otherwise bring the property into compliance with the environmental laws prevented and prevents Roanoke Cement from exercising the option to purchase the property so that it does not take on Chesapeake Product's environmental law liabilities;

D. It failed to comply with the laws and regulations of the City of Chesapeake respecting the maintenance and repair of the improvements on the property, resulting in the condemnation by the City of certain structures on the Option Property;

E. It failed to take actions in response to notices from the EPA and DEQ to bring the property into compliance with environmental laws and regulations;

F. It has failed to promptly comply with all laws and other requirements of all governmental authorities having or claiming jurisdiction with respect to the Option Property;

G. It has otherwise actually and anticipatorily, breached the Contract Documents, the Certificate of Representations and Warranties, the Option Agreement and Deed of Trust by failing to comply with their terms and conditions and by making itself unable to comply with the present and future obligations thereunder.

46. As a consequence of Chesapeake Products' foregoing breaches, Roanoke Cement has been damaged and will continue to be damaged in that among other things, it paid valuable consideration for the option, and the values of its option and the Option Property have been significantly diminished and will continue to be diminished. Moreover, the use and value of its adjoining property have been and will continue to be diminished. And Roanoke Cement has otherwise been damaged and will continue to be damaged.

WHEREFORE, Roanoke Cement Company LLC prays for judgment against Chesapeake Products, Inc. in the amount of $3,500,000, together with pre-judgment and post-judgment interest, costs and attorney's fees, and further prays that the corporate veil be pierced and that judgment be entered in the same amount against the remaining defendants, Frit, Inc., Frit Industries, Inc., Shelton E. Allred, Carl E. Schauble, David W. Benefield, James M. Wyatt and Terry W. Teeter, jointly and severally. .

COUNT II
(Breach of Contract/Specific Performance/Injunction - Chesapeake Products, Inc. (In the Alternative)

47. The allegations in paragraphs 1 through 46 are incorporated herein by reference.

48. The Option Property is unique and of special value to Roanoke Cement because it is situated adjacent to its existing terminal and its use in whole or in part in the future was and is the basis of its taking and keeping the Option to purchase the Option Property.

49. Chesapeake Products' obligations to maintain the Option Property are ongoing and will continue during the option period.

50. Because of the ongoing nature of Chesapeake Products' failure to maintain the property, and its continuing acts and/or omissions constituting waste, and its continuing failure to comply with pertinent laws and regulations, Roanoke Cement will not be able to exercise its option and take title to part or all of the property in an unencumbered state and in accordance with the terms and conditions of the Option Agreement as it may need to for its future terminal operations, and will be irreparably harmed.

51. Moreover, because of the ongoing nature of Chesapeake Products' breaches, future damages may or will be difficult to quantify and because of the unique nature of the Option Property, Roanoke Cement will not have an adequate remedy at law. Roanoke Cement shall be irreparably harmed without specific performance of the Contract or similar injunctive relief.

52. As a consequence of Chesapeake Products' breaches and Roanoke Cement's lack of an adequate remedy at law for said ongoing breaches, Roanoke Cement is entitled to specific performance of the Option Agreement and/or an injunction against said continued breaches.

WHEREFORE, Roanoke Cement Company LLC prays for a judgment order for specific performance and temporary and permanent injunctive relief as follows: (A) a judgment ordering Chesapeake Products, Inc. to fully perform its obligations under the Option Agreement respecting its duty to maintain the property, and to not commit waste and enjoining it from continued waste; (B) a judgment ordering Chesapeake Products, Inc. to bring the Option Property into compliance with all laws and regulations so as to avoid the imposition of fines, levies, and/or liens against the Option Property by public bodies and enjoining it from continuing such noncompliance; (C) a judgment ordering Chesapeake Products, Inc. to bring the property into compliance with all environmental laws and regulations and enjoining it from continuing such violations; (D) a judgment for such further and equitable relief as the Court deems just and proper, and for Roanoke Cement Company LLC's costs and attorney's fees; and (E) an order piercing the corporate veil be pierced and granting judgment against the remaining defendants, jointly and severally, for the same relief sought in paragraphs A through D herein.

COUNT III (Nuisance – Chesapeake Products, Inc.)

53. The allegations in paragraphs 1 through 52 are incorporated herein by reference.

54. Chesapeake Products has vacated and abandoned the Option Property.

55. The continued presence of hazardous substances on the Option Property presents an unreasonable risk to human health and the environment. They also pose risks of migration to Roanoke Cement's adjoining property, and to groundwater and surface water, including the Elizabeth River.

56. Roanoke Cement's interests in the Option Property (by virtue of the option to purchase and by virtue of the Deed of Trust securing it) are being damaged and diminished by the presence of the hazardous substances thereon.

57. Chesapeake Products has continued to maintain and allow the hazardous substances to exist in and on the property. These hazardous substances continue to diminish the value of Roanoke Cement's option interest and collateral under the Deed of Trust.

59. The foregoing actions or omissions by Chesapeake Products in maintaining the hazardous substances on the property constitute a nuisance and/or nuisance per se which have damaged, are damaging, and will continue to damage Roanoke Cement and subject it to irreparable harm.

60. Roanoke Cement does not have an adequate remedy at law, and given the dangers posed by the hazardous substances to its interests, it is entitled to an injunction requiring Chesapeake Products to abate the nuisance by remediating the hazardous substances such that they no longer present a threat to human health and the environment and to Roanoke Cement's adjacent property.

WHEREFORE, Roanoke Cement Company LLC prays for a judgment as follows: (A) an order requiring Chesapeake Products, Inc. to abate the nuisance on the Option Property; (B) an order directing Chesapeake Products to remediate the hazardous substances on its property such that they no longer present a threat to human health and the environment and to Roanoke Cement's adjacent property; (C) an order awarding it damages that it has incurred or may continue to incur as a consequence of the nuisance, including, but not limited to diminution in value to its adjoining property, to its option, and to the Option

Property; (D) an order granting Roanoke Cement Company LLC such equitable and further relief as the Court deems just and proper, and for its costs and attorney's fees in this behalf expended; and, (E) an order piercing the corporate veil and granting judgment against the remaining defendants, jointly and severally, for the same relief sought in paragraphs A through D herein.

COUNT IV (Voluntary Conveyances as to all Defendants)

61. The allegations in paragraphs 1 through 60 are incorporated herein by reference.

62. At the closing of the sale of the dock portion of Chesapeake Products' property to TTC, LLC, in June 2001, Chesapeake Products received approximately $1,400,000 of the sales proceeds.

63. Chesapeake Products more recently has ceased all of its business operations at its Chesapeake, Virginia facility and has vacated and abandoned the property. On information and belief, it is alleged that Chesapeake Products is no longer in business and does not operate elsewhere.

64. At all times relevant hereto, Roanoke Cement, or its predecessor in interest, have been creditors of Chesapeake Products with respect to all obligations and liabilities of Chesapeake Products under the Option Agreement and the Deed of Trust.

65. Notwithstanding the outstanding past, present and future obligations that Chesapeake Products has to Roanoke Cement, it is believed and, therefore, alleged that Chesapeake Products distributed or otherwise transferred all cash (including the bulk of the $1,400,000 purchase price for the dock area) and other money and assets to its parent

companies, Frit Industries and Frit and/or to one or more of the remaining defendants, Shelton E. Allred, Carl E. Schauble, David W. Benefield, James M. Wyatt and Terry W. Teeter or for their benefit, without consideration or for grossly inadequate consideration.

66. At the time of the foregoing transfers of the money and other assets by Chesapeake Products, it was either insolvent or was thereby rendered insolvent.

67. Said transfers constitute voluntary conveyances in violation of Virginia Code § 55-81 and are void as to Roanoke Cement and/or its predecessors in interest who were and continue to be creditors of Chesapeake Products.

WHEREFORE, your plaintiff, Roanoke Cement Company LLC prays for judgment pursuant to Virginia Code § 55-82 as follows: (A) an order declaring void all voluntary transfers of money and/or other assets, personal or real of Chesapeake Products to the remaining defendants (or to any other third persons) and avoiding said transfers; (B) an order of judgment against all recipients of the voluntary transfers of money, equal to the sums of money received; (C) an order for the restoration and sale of any other transferred property (whether personal or real), and for a deficiency judgment against Chesapeake Products, Inc. for any deficiency remaining thereafter; and (D) an order granting Roanoke Cement its costs, attorney's fees, pre-judgment and post-judgment interest, and such further and equitable relief as the Court deems just and proper.

COUNT V (Fraudulent Conveyances as to all Defendants)

68. The allegations in paragraphs 1 through 67 are incorporated herein by reference.

69. The transfers and conveyances by Chesapeake Products to the co-defendants were made with no consideration or inadequate consideration. They were further made with the intent to delay, hinder or defraud creditors including, but not limited to Roanoke Cement and/or its predecessor in interest. Chesapeake Products knew that it did not intend to fully perform its obligations under the Option Agreement at the time that contract was signed by its agents and Roanoke Cement's predecessor. Moreover, it knew that by conveying the sales proceeds of the 2001 sale to its parent company and/or to the individual shareholders, officers or directors, and by making subsequent transfers of money and assets to those parties and subsequently ceasing its operations, it would not have the means or ability to maintain the Option Property, or to otherwise discharge the ongoing obligations under the Option Agreement which among other things require it to maintain and repair the property and to remove hazardous wastes and remediate hazardous environmental conditions.

70. The recipients of the transfers had full knowledge of Chesapeake Products' fraudulent intent and fraud and willfully participated and collaborated in a scheme to loot Chesapeake Products' assets for their own personal benefit.

71. Said transfers are void under Virginia Code § 55-80 as fraudulent conveyances.

WHEREFORE, Roanoke Cement Company LLC prays for judgment pursuant to Virginia Code § 55-82 as follows: (A) an order declaring void all fraudulent transfers of money and/or other assets, personal or real, of Chesapeake Products to the remaining defendants (or to any other third persons) and avoiding said transfers; (B) an order of judgment against all recipients of the fraudulent transfers of money, equal to the sums of money received; (C) an order for the restoration and sale of any other transferred property (whether personal or real), and for a deficiency judgment against Chesapeake Products, Inc. for any deficiency remaining thereafter; and (D) an order granting Roanoke Cement Company LLC it its costs, attorney's fees, pre-judgment and post-judgment interest, and such further and equitable relief as the Court deems just and proper.

COUNT VI (Fraud In The Inducement)

72. The allegations in paragraphs 1 through 71 are incorporated herein by reference.

73. At the time Carl Schauble and Terry Teeter were negotiating the Option on behalf of Chesapeake Products, they knew that Chesapeake Products' Virginia business would be phased out.

74. At the time that they caused Chesapeake Products to enter into the Option Agreement promising to, among other things, maintain the Option Property, not commit waste, and abide by all terms and conditions of the Option, Schauble and Teeter, acting on behalf of Chesapeake Products, knowingly and intentionally were misstating their present intent to fulfill the obligations under the Option Agreement. Schauble and Teeter knew that they intended to direct the proceeds from Chesapeake Products to Frit Industries, Frit and to themselves and never intended for Chesapeake Products to perform or be able to perform its obligations under the Option Agreement.

75. Nevertheless, they made the material misrepresentations to Roanoke Cement's predecessor in interest, never intending to perform, in order to induce Roanoke Cement to purchase the dock area and enter into the Option Agreement for the Option Property.

76. Roanoke Cement's predecessor in interest relied on the material misrepresentations and concealments, closing the purchase of the dock and entering into the Option Agreement.

77. Immediately thereafter, the defendants diverted the proceeds to the use of Frit Industries and their own benefit, reducing Chesapeake Products' financial ability to perform.

78. Schauble and Teeter, acting on behalf of themselves and the remaining defendants acted intentionally, willfully and with conscious disregard of the rights of Roanoke Cement's predecessor in interest with the intent to defraud it.

79. As a consequence of the fraud Roanoke Cement has been and will be damaged.

WHEREFORE, Roanoke Cement Company LLC moves for judgment against the defendants Carle E. Schauble, Terry Teeter and Chesapeake Products, jointly and severally, in the amount of $3,500,000 in compensatory damages, together with punitive damages in the amount of $350,000, costs and attorney's fees and further prays that the corporate veil of Chesapeake Products be pierced and that judgment be entered in the same amount against the remaining defendants, jointly and severally.

COUNT VII - CITIZENS SUIT FOR VIOLATIONS OF THE CLEAN WATER ACT (Against Chesapeake Products, Inc.)

80. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 43 and 54 through 60.

JURISDICTION AND VENUE

81. This Court has subject matter jurisdiction over the claims set forth in this Count pursuant to Section 505(a)(1) of the Clean Water Act (the "Act"), 33 U.S.C. § 1365(a)(1).

82. Pursuant to Section 505(b) of the Act, 33 U.S.C. § 1365(b), Plaintiff gave notice of the violations alleged herein and of its intention to file suit regarding those violations on April 4, 2007 to Chesapeake Products, the Administrator of EPA, the Regional Administrator of EPA Region III, and the Director of the Virginia Department of Environmental Quality ("DEQ"). A copy of this notice is attached to this Complaint as Exhibit C.

83. The actions taken by defendant Chesapeake Products to alleviate the violations described in the notice have been insufficient, and those violations are ongoing and continuing, or they will recur with every rainfall event.

84. More than sixty days have passed since Plaintiff gave notice to the Administrator of EPA, the state in which the violation occurred, and to Chesapeake Products, and neither the Administrator of EPA nor the Commonwealth of Virginia has commenced an administrative, criminal or civil action to redress the violations described in the notice. *See* Clean Water Act Section 505(b), 33 U.S.C. § 1365(b).

85. Venue is appropriate in this district pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this district.

PERTINENT FACTS AS TO THIS COUNT

86. Plaintiff owns and regularly uses land and docks along the shoreline of the Elizabeth River that are adjacent to the property on which, and from which, Chesapeake Products is committing the violations alleged herein. In addition, Plaintiff regularly uses the portions of the Elizabeth River into which Chesapeake Products unlawfully discharges pollutants. The adverse effects of these illegal discharges interfere with Plaintiff's use and enjoyment of its property and the Elizabeth River.

87. Plaintiff will continue to use its property and the Elizabeth River in the future. Thus, Chesapeake Products' violations will continue to adversely affect Plaintiff's use and enjoyment of both.

88. Defendant Chesapeake Products operated a fertilizer mixing plant on its property until approximately 2003 when it ceased manufacturing operations.

99. When Chesapeake Products ceased operating the fertilizer mixing plant, it left certain raw materials consisting of fertilizer ingredients and other related materials on its property. Some of these raw materials and ingredients were exposed to precipitation since the time Chesapeake Products closed the plant. Moreover, hazardous substances and constituents in the raw materials used by Chesapeake Products during its operation of the fertilizer manufacturing plant have been released to the soil at the property, and these hazardous substances and constituents act as a continuing source of pollutants to the Elizabeth River.

90. Due to the destruction and collapse of the roof of the warehouse on Chesapeake Products' property after it ceased operation and abandoned the property, additional fertilizer

ingredients, related materials and hazardous substances and constituents were, and are now, exposed to precipitation.

91. As a consequence of these conditions, stormwater comes into contact with these hazardous substances and constituents on Chesapeake Products' property.

92. Stormwater that comes into contact with the exposed raw materials and ingredients becomes contaminated with pollutants and then flows into a series of storm drains that discharge to the Elizabeth River, a water of the United States. The storm drains are point sources.

93. According to an October 6, 2006 Trip Report prepared for EPA by its contractor, Tetra Tech EM Inc., stormwater on Chesapeake Products' property contain elevated concentrations of metals, including lead, copper, arsenic, and mercury. A copy of this report was attached to the Plaintiff's notice.

94. The stormwater discharges, including the washout and overflow through drainage courses and systems into the Elizabeth River, constitute additions of pollutants to waters of the United States from one or more point sources.

STATUTORY BACKGROUND

95. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant from a point source to waters of the United States by any person, unless in accordance with the Act.

96. Such discharges from point sources that require an NPDES permit include the discharge of stormwater associated with industrial activity. *See* Clean Water Act Section 402(p)(3)(A), 33 U.S.C. § 1342(p)(3)(A).

97. Pursuant to Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), DEQ is authorized to issue NPDES permits for the discharge of stormwater associated with industrial activity.

98. DEQ issued the General Virginia Pollutant Discharge Elimination System Permit for Discharges of Storm Water Associated with Industrial Activity in 2004 (the "General Permit"). The permit is codified at 9 V.A.C. § 25-151-10, et seq.

99. In order to receive coverage under the General Permit, a discharger must file a registration statement with DEQ, and it must comply with the other requirements of the General Permit. *See* 9 V.A.C. § 25-151-50(A).

100. As an alternative to the General Permit, a party discharging stormwater associated with industrial activity may also obtain an individual permit from DEQ.

101. Chesapeake Products has no effective registration statement on file with DEQ and does not possess a permit from EPA, DEQ, or any other agency allowing it to discharge this stormwater to the Elizabeth River.

VIOLATIONS OF THE CLEAN WATER ACT

102. Stormwater discharges from Defendant Chesapeake Products' property into the Elizabeth River are releases of stormwater associated with industrial activity.

103. Discharges of stormwater associated with industrial activity from point sources to waters of the United States require a NPDES permit.

104. Chesapeake Products discharges stormwater from its property through one or more point sources without a permit from DEQ, in violation of Section 301(a) of the Clean

Water Act, 33 U.S.C. § 1311(a). Alternatively, Chesapeake Products' property is a point source.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court: (A) enter judgment declaring that Defendant Chesapeake Products has violated the Clean Water Act by discharging stormwater from its property in violation of Sections 301(a) and 402(p)(3)(A) of the Clean Water Act, 33 U.S.C. §§ 1311(a) & 1342(p)(3)(A); (B) issue a preliminary and permanent injunction compelling Defendant Chesapeake Products to comply with the Act and with the terms of any permit it receives from DEQ; (C) order Defendant Chesapeake Products to pay the maximum amount of civil penalties per day for each violation, pursuant to Sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d) & 1365(a); (D) award Plaintiffs their costs of suit, including reasonable attorney and expert witness fees, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); (E) enter an order piercing the corporate veil of Chesapeake Products, Inc. and grant judgment against the remaining defendants, jointly and severally, for the relief prayed for in paragraphs A through D; and (F) grant Plaintiff such further relief as may be appropriate.

TRIAL BY JURY IS DEMANDED.

ROANOKE CEMENT COMPANY LLC

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